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**CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court**

AUG 01 2013

John A. Clark, Executive Officer/Clark  
By Kathy Morales, Deputy  
KATHY MORALES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 FLO & EDDIE, INC., a California  
15 corporation, individually and on behalf of all  
others similarly situated,

**Plaintiff:**

17 |

18 SIRIUS XM RADIO, INC., a Delaware corporation; and DOES 1 through 100,

### Defendants.

Case No.

## **CLASS ACTION**

BC517032

**COMPLAINT FOR:**

1. **MISAPPROPRIATION**  
[Cal Civ. Code § 980(a)(2) and Common Law];
2. **UNFAIR COMPETITION**  
[Cal Bus. & Prof. Code § 17200 and Common Law]; AND
3. **CONVERSION**

**DEMAND FOR JURY TRIAL**

1 Plaintiff FLO & EDDIE, INC. (“Plaintiff” or “Flo & Eddie”) files this class action  
2 Complaint on behalf of itself and on behalf of all other similarly situated owners of sound  
3 recordings of musical performances that initially were “fixed” (*i.e.*, recorded) prior to February 15,  
4 1972 (the “Pre-1972 Recordings”) against Defendants SIRIUS XM RADIO, INC. (“Defendant” or  
5 “SiriusXM”) and DOES 1-100, and alleges as follows:

6 **NATURE OF THE ACTION**

7 1. California Civil Code Section 980 (a)(2) provides that “[t]he author of an original  
8 work of authorship consisting of a sound recording initially fixed prior to February 15, 1972, has  
9 an exclusive ownership therein until February 15, 2047, as against all persons except one who  
10 independently makes or duplicates another sound recording that does not directly or indirectly  
11 recapture the actual sounds fixed in such prior sound recording, but consists entirely of an  
12 independent fixation of other sounds, even though such sounds imitate or simulate the sounds  
13 contained in the prior sound recording.” The unauthorized duplication and exploitation of Pre-  
14 1972 Recordings in California constitutes misappropriation, unfair competition and conversion.

15 2. The principals of Flo & Eddie, Mark Volman and Howard Kaylan, have been  
16 performing together as The Turtles since 1965 and have recorded numerous iconic hits including  
17 “Happy Together,” “It Ain’t Me Babe,” “She’d Rather Be With Me,” “You Baby,” “She’s My  
18 Girl,” “Elenore,” and many others. Since approximately 1971, Flo & Eddie has owned the entire  
19 catalog of 100 original master recordings by The Turtles, all of which were recorded prior to  
20 February 15, 1972. Notwithstanding the absence of any license or authorization from Plaintiff,  
21 The Turtles recordings can be heard every hour of every day by subscribers in California to the  
22 satellite and Internet services owned by Defendant known as “Sirius Satellite Radio,” “XM  
23 Satellite Radio” and “SiriusXM Satellite Radio” (individually and collectively, the “Service”).  
24 Plaintiff Flo & Eddie brings this class action on its own behalf and on behalf of all other similarly  
25 situated owners of Pre-1972 Recordings (the “Class” or “Class Members”) to put an end to  
26 SiriusXM’s wholesale misappropriation of their Pre-1972 Recordings and to obtain damages,  
27 including punitive damages.

28 3. The Service is a highly profitable business which engages in the large-scale

1 distribution and public performance of sound recordings to over 24 million subscribers. The  
2 Service is distributed in California to its subscribers through (a) satellite digital transmission  
3 directly to subscribers via digital radios manufactured or licensed by SiriusXM; (b) satellite digital  
4 transmission to subscribers of other services, such as DIRECTV Satellite Television Service and  
5 Dish Network Satellite Television Service via digital set top boxes manufactured or licensed by  
6 DIRECTV or Dish; and (c) the Internet, by way of (i) digital media streaming devices, such as  
7 Roku, digital radios and home audio systems, such as Sonos; (ii) its website at  
8 [www.SiriusXM.com](http://www.SiriusXM.com); or (iii) computer, smart phone and other mobile applications for various  
9 operating systems, including Apple iOS, Android, Windows, Blackberry and HP webOS. In  
10 furtherance of the Service, SiriusXM, without any license or authority, has copied Plaintiff's and  
11 each Class Members' Pre-1972 Recordings onto the Service's central server(s) and makes such  
12 copies available to its subscribers in California. SiriusXM publicly performs these recordings in  
13 California via streaming audio transmission through the Service for a fee as part of a subscription  
14 plan that currently includes up to 72 different music channels. As part of the Service, many  
15 subscribers in California are also able to: (A) download the stream of a selected channel on the  
16 Service, allowing later or multiple listenings of the sound recordings previously streamed during  
17 the selected time period; (B) download particular sound recordings, allowing later or multiple  
18 listenings of such sound recordings; (C) download particular programs incorporating sound  
19 recordings as part of the Service's "On Demand" feature, allowing later or multiple listenings of  
20 such sound recordings; and (D) allow subscribers to pause, rewind and replay sound recordings  
21 using the Service's "Replay" feature.

22       4. Simply stated, SiriusXM has disregarded the Plaintiff's and other Class Members'  
23 "exclusive ownership" of their Pre-1972 Recordings in California, impaired their ability to sell,  
24 lawfully exploit, or otherwise control their Pre-1972 Recordings as permitted under California law  
25 and misappropriated same for its own financial gain. SiriusXM's conduct is causing, and will  
26 continue to cause, enormous and irreparable harm to Plaintiff and the other Class Members unless  
27 compensatory and punitive damages are awarded against SiriusXM and it is enjoined and  
28 restrained from engaging in further misappropriation of the Pre-1972 Recordings.

## **THE PARTIES, JURISDICTION AND VENUE**

2       5. Plaintiff Flo & Eddie is a corporation duly organized and existing under the laws of  
3 California, with its principal place of business in Los Angeles, California. Plaintiff is engaged in  
4 the business of distributing, selling, and/or licensing the reproduction, distribution, sale, and  
5 performance of its Pre-1972 Recordings in phonorecords, in audiovisual works, and for streaming  
6 (*i.e.*, performing) and downloading over the Internet. Plaintiff invests substantial money, time,  
7 effort, and creative talent in creating, advertising, promoting, selling, and licensing its unique and  
8 valuable sound recordings.

9       6. Plaintiff possesses exclusive ownership rights in The Turtles Pre-1972 Recordings,  
10 the titles of which are specified on the schedule attached hereto as Exhibit A and incorporated  
11 herein by reference (“Plaintiff’s Recordings”). The United States Congress expressly has  
12 recognized that the states provide exclusive protection through various state law doctrines to  
13 recordings “fixed” before February 15, 1972, and that the federal Copyright Act does not “annul[]  
14 or limit[] those rights until February 15, 2067.” 17 U.S.C. § 301(c). Accordingly, as quoted  
15 above, California Civil Code § 980(a)(2) protects the exclusive ownership of Plaintiff and the  
16 other Class Members to their Pre-1972 Recordings in California.

17       7. Upon information and belief, Defendant SiriusXM is a corporation duly organized  
18 and existing under the laws of Delaware, with its principal place of business in New York, New  
19 York, with offices throughout California, including, without limitation, in Glendale, California  
20 and Long Beach, California. The Court has personal jurisdiction over Defendant in that Defendant  
21 has multiple offices in Los Angeles County, Defendant is engaged in tortious conduct in  
22 California, and Defendant's conduct causes injury to Plaintiff and the other Class Members in  
23 California. Venue of this action is proper in Los Angeles County in that Defendant maintains  
24 offices in Los Angeles County.

25       8.     The true names and capacities, whether individual, corporate, associate or otherwise,  
26 of defendants named herein as Does 1 through 100, inclusive, are unknown to Plaintiff who  
27 therefore sues said defendants by such fictitious names (the "Doe Defendants"). Plaintiff will  
28 amend this Complaint to allege their true names and capacities when such have been ascertained.

1 Upon information and belief, each of the Doe Defendants herein is responsible in some manner for  
2 the occurrences herein alleged, and Plaintiff's injuries and those of the other Class Members as  
3 herein alleged were proximately caused by such defendants' acts or omissions. (All of the  
4 Defendants, including the Doe Defendants, collectively are referred to as "Defendants").

5 **CLASS ACTION ALLEGATIONS**

6 9. Plaintiff brings this action as a class action pursuant to Section 382 of the California  
7 Code of Civil Procedure on behalf of itself and the other Class Members defined as the owners of  
8 Pre-1972 Recordings reproduced, performed, distributed or otherwise exploited by Defendants in  
9 California without a license or authorization to do so during the period from August 1, 2009 to the  
10 present. Plaintiff reserves the right to modify this definition of the Class after further discovery;  
11 the Court may also be requested to utilize and certify subclasses in the interests of ascertainability,  
12 manageability, justice and/or judicial economy.

13 10. This action may be properly brought and maintained as a class action because there  
14 is a well-defined community of interest in the litigation and the Class Members are readily  
15 ascertainable from Defendant SiriusXM's database files and records. Plaintiff is informed and  
16 believes, and on that basis alleges, that Defendants have engaged Rovi Corporation to supply the  
17 metadata, including the metadata relating to Pre-1972 Recordings unlawfully streamed to  
18 subscribers in California, and that such metadata contains the name and location of the owners  
19 thereof. The Class members are further ascertainable through methods typical of class action  
20 practice and procedure.

21 11. Plaintiff is informed and believes, and alleges thereon, that the Pre-1972 Recordings  
22 misappropriated in California by Defendants number in the millions and are owned by many  
23 thousands of Class Members. It is therefore impractical to join all of the Class Members as named  
24 Plaintiffs. Further, the claims of the Class Members may range from smaller sums to larger sums.  
25 Accordingly, using the class action mechanism is the most economically feasible means of  
26 determining and adjudicating the merits of this litigation.

27 12. The claims of Plaintiff are typical of the claims of the Class Members, and Plaintiff's  
28 interests are consistent with and not antagonistic to those of the other Class Members it seeks to

1 represent. Plaintiff and the other Class Members have all been subject to misappropriation of their  
2 Pre-1972 Recordings in California, have sustained actual pecuniary loss and face irreparable harm  
3 from Defendants' continued misappropriation of their Pre-1972 Recordings.

4       13. Plaintiff has no interests that are adverse to, or which conflict with, the interests of  
5 the other Class Members and is ready and able to fairly and adequately represent and protect the  
6 interests of the other Class Members. Plaintiff believes strongly in the protection of artists' rights  
7 in connection with their creative work. Plaintiff has raised viable claims for misappropriation,  
8 unfair competition and conversion of the type well established in California and reasonably  
9 expected to be raised by Class Members. Plaintiff will diligently pursue those claims. If  
10 necessary, Plaintiff may seek leave of the Court to amend this Complaint to include additional  
11 class representatives to represent the Class or additional claims as may be appropriate. Plaintiff is  
12 represented by experienced, qualified and competent counsel who are committed to prosecuting  
13 this action.

14       14. Common questions of fact and law exist as to all Class Members that plainly  
15 predominate over any questions affecting only individual Class Members. These common legal  
16 and factual questions, which do not vary from Class Member to Class member, and which may be  
17 determined without reference to the individual circumstances of any Class Member include,  
18 without limitation, the following:

- 19           (A) Whether Defendant SiriusXM reproduced, performed, distributed or  
20 otherwise exploited Pre-1972 Recordings in the California;
- 21           (B) Whether Defendant SiriusXM's reproduction, performance, distribution or  
22 other exploitation of Pre-1972 Recordings in California constitutes misappropriation under  
23 California Civil Code Section 980(a)(2);
- 24           (C) Whether Defendant SiriusXM's reproduction, performance, distribution or  
25 other exploitation of Pre-1972 Recordings in the California constitutes unlawful or unfair  
26 business acts or practices in violation of California Business & Professions Code Section  
27 17200;
- 28           (D) Whether Defendant SiriusXM's reproduction, performance, distribution or

1 other exploitation of Pre-1972 Recordings in California constitutes conversion under  
2 California common law;

3 (E) The basis on which restitution and/or damages to all injured members of the  
4 Class can be computed;

5 (F) Whether Defendant SiriusXM's violation of California Civil Code Section  
6 980(a)(2) entitles the Class Members to recover punitive damages;

7 (G) Whether Defendant SiriusXM's violation of California Civil Code Section  
8 980(a)(2) is continuing, thereby entitling Class Members to injunctive or other equitable  
9 relief;

10 (H) Whether Defendant SiriusXM's violation of California Business &  
11 Professions Code § 17200 entitles the Class Members to recover punitive damages;

12 (I) Whether Defendant SiriusXM's violation of California Business & Professions  
13 Code § 17200 is continuing, thereby entitling Class Members to injunctive or other relief;

14 (J) Whether Defendant SiriusXM's violation of California's common law of  
15 conversion entitles Class Members to recover punitive damages; and

16 (K) Whether Defendant SiriusXM's violation of California's common law of  
17 conversion is continuing, thereby entitling Class Members to injunctive or other relief.

18 15. A class action is superior to all other available methods for the fair and efficient  
19 adjudication of this controversy, since individual litigation of the claims of all Class Members is  
20 highly impractical. Even if every Class Member could afford to pursue individual litigation, the  
21 Court system could not. It would be unduly burdensome to the courts in which individual  
22 litigation of numerous cases would proceed. Individualized litigation would also present the  
23 potential for varying, inconsistent or contradictory judgments and would magnify the delay and  
24 expense to all parties and to the court system resulting from multiple trials of the same factual  
25 issues. By contrast, maintenance of this action as a class action, with respect to some or all of the  
26 issues presented herein, presents few management difficulties, conserves the resources of the  
27 parties and of the court system, and protects the rights of each Class Member. Plaintiff anticipates  
28 no difficulty in the management of this action as a class action.

1       16. Additionally, the prosecution of separate actions by individual Class Members may  
2 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive  
3 of the interests of the other Class Members not parties to such adjudications or that would  
4 substantially impair or impede the ability of such nonparty Class Members to protect their  
5 interests. The prosecution of individual actions by Class Members could establish inconsistent  
6 results and incompatible standards of conduct for Defendant SiriusXM.

7        17. Defendants have engaged in misappropriation, unfair competition and conversion  
8 which has affected all of the Class Members such that final and injunctive relief on behalf of the  
9 Class as a whole is efficient and appropriate.

## **FIRST CAUSE OF ACTION**

**(For Violation of California Civil Code § 980(a)(2) and Common Law Misappropriation)**

12       18. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 17,  
13 above, as though set forth in full herein.

14 19. Plaintiff and the other Class Members have exclusive ownership of their Pre-1972  
15 Recordings in California pursuant to California Civil Code § 980(a)(2) quoted above and under  
16 California common law. By their conduct alleged above, Defendants have violated Plaintiff's and  
17 each Class Members' right to exclusive ownership of their Pre-1972 Recordings. The Plaintiff  
18 and Class Members have invested substantial time and money in the development of their Pre-  
19 1972 Recordings.

20. The Defendants have misappropriated the Pre-1972 Recordings at little or no cost  
21 and without license or authority. They have copied the Pre-1972 Recordings owned by Plaintiff  
22 and the other Class Members and publicly perform these recordings in California for their  
23 subscribers as set forth in paragraph 3, above. Defendants have disregarded the Plaintiff's and  
24 other Class Members' "exclusive ownership" of their Pre-1972 Recordings, impaired their ability  
25 to sell, lawfully exploit, or otherwise control their Pre-1972 Recordings and misappropriated these  
26 Pre-1972 Recordings for their own financial gain.

27 21. As a direct and proximate consequence of Defendants' misappropriation of the Pre-  
28 1972 Recordings owned by Plaintiff and the Class Members in violation of Civil Code § 980(a)(2)

1 as alleged above, Plaintiff and the Class Members have been damaged in an amount that is not as  
2 yet fully ascertained but which Plaintiff is informed and believes, and alleges thereon, exceeds  
3 \$100,000,000, according to proof.

4       22. Plaintiff is informed and believes, and alleges thereon, that in engaging in the  
5 conduct described above, the Defendants acted with oppression, fraud and/or malice. The conduct  
6 of the Defendants has been despicable and undertaken in conscious disregard of the Plaintiff's and  
7 each Class Member's rights. Accordingly, Plaintiff and the Class members are entitled to an  
8 award of punitive damages against Defendants in an amount sufficient to punish and make an  
9 example of them according to proof.

10       23. Defendants' conduct is causing, and unless enjoined and restrained by this Court,  
11 will continue to cause, Plaintiff and each Class Member great and irreparable injury that cannot  
12 fully be compensated or measured in money. Plaintiff and the other Class Members are entitled to  
13 temporary, preliminary and permanent injunctions, prohibiting further violation of Plaintiff's and  
14 Class Members' exclusive ownership of their Pre-1972 Recordings in California.

## **SECOND CAUSE OF ACTION**

## **(For Statutory and Common Law Unfair Competition)**

17 24. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 23,  
18 above, as though set forth herein.

19       25. The acts and conduct of Defendants alleged above constitute an appropriation and  
20 invasion of the property rights of Plaintiff and each Class Member to their Pre-1972 Recordings in  
21 California, and constitute unfair competition under California Business & Professions Code §  
22 17200 and common law. Defendants have engaged in unfair competitive business practices  
23 forbidden by law.

24        26. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class  
25 Members are entitled to recover all proceeds and other compensation received or to be received by  
26 Defendants from their misappropriation of the Pre-1972 Recordings. Plaintiff and the members of  
27 the Class have been damaged, and Defendants have been unjustly enriched, in an amount that is  
28 not as yet fully ascertained but which Plaintiff is informed and believes, and alleges thereon,

1 exceeds \$100,000,000, according to proof at trial. Such damages and/or restitution and  
2 disgorgement should include a declaration by this Court that Defendants are constructive trustees  
3 for the benefit of Plaintiff and the other Class Members, and an order that Defendants convey to  
4 Plaintiff and Class Members the gross receipts received or to be received that are attributable to  
5 Defendants misappropriation of the Pre-1972 Recordings.

6       27. Plaintiff is informed and believes, and alleges thereon, that in engaging in the  
7 conduct as described above, the Defendants acted with oppression, fraud and/or malice. The  
8 conduct of the Defendants has been despicable and undertaken in conscious disregard of  
9 Plaintiff's rights. Accordingly, Plaintiff and the Class Members are entitled to an award of  
10 punitive damages against Defendants, and each of them, in an amount sufficient to punish and  
11 make an example of them according to proof at trial.

12        28. Defendants' conduct is causing, and unless enjoined and restrained by this Court,  
13 will continue to cause, Plaintiff and the Class Members great and irreparable injury that cannot  
14 fully be compensated or measured in money. Plaintiff and the other Class Members are entitled to  
15 temporary, preliminary and permanent injunctions, prohibiting further violation of Plaintiff's and  
16 the other Class Members right to exclusive ownership of their Pre-1972 Recordings and further  
17 acts of unfair competition pursuant to California Business & Professions Code § 17203.

### **THIRD CAUSE OF ACTION**

### **(For Conversion)**

20       29. Plaintiff hereby incorporates the allegations set forth in paragraphs 1 through 28,  
21 above, as though set forth in full herein.

22       30. Plaintiff and each Class Member are, and at relevant times were, the exclusive  
23 owner of all right, title and interest in and to their Pre-1972 Recordings and possession thereof in  
24 California.

25       31. By their acts and conduct alleged above, Defendants have converted Plaintiff's and  
26 the Class Members' property rights in their Pre-1972 Recordings for Defendants' own use and  
27 wrongful disposition for financial gain.

32. As a direct and proximate result of Defendants' conversion, Plaintiff and the

1 members of the Class have been damaged, and Defendants have been unjustly enriched, in an  
2 amount that is not as yet fully ascertained but which Plaintiff is informed and believes, and alleges  
3 thereon, exceeds \$100,000,000 according to proof at trial. Defendants are constructive trustees for  
4 the benefit of Plaintiff and Class Members, and the Court should order Defendants to convey to  
5 Plaintiff and the Class Members the gross receipts received or to be received from Defendants  
6 misappropriation of the Pre-1972 Recordings.

7       33. Plaintiff is informed and believes, and based thereon alleges, that in engaging in the  
8 conduct as described above, the Defendants acted with oppression, fraud and/or malice. The  
9 conduct of the Defendants has been despicable and undertaken in conscious disregard of  
10 Plaintiff's rights. Accordingly, Plaintiff and each member of the Class is entitled to an award of  
11 punitive damages against defendants, and each of them, in an amount sufficient to punish and  
12 make an example of them according to proof at trial.

13       34. Defendants' conduct is causing, and unless enjoined and restrained by this Court will  
14 continue to cause, Plaintiff and the Class Members great and irreparable injury that cannot fully be  
15 compensated or measured in money. Plaintiff and each Class Member are entitled to temporary,  
16 preliminary and permanent injunctions prohibiting further acts of conversion of their Pre-1972  
17 Recordings.

## **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of itself and the other Class Members, prays for  
20 Judgment against Defendants, and each of them, as follows:

## 21 | Regarding the Class Action:

22 1. That this is a proper class action maintainable pursuant to the applicable provisions of the  
23 California Code of Civil Procedure; and  
24 2. That the named Plaintiff is appropriate to be appointed representative of the respective  
25 Class.

## 26 On The First Cause of Action For Misappropriation against all Defendants:

27 1. For compensatory damages in excess of \$100,000,000 according to proof at trial;  
28 2. Punitive and exemplary damages according to proof trial; and

1       3. A temporary, preliminary, and permanent injunction enjoining and restraining Defendants,  
2       and their respective agents, servants, directors, officers, principals, employees,  
3       representatives, subsidiaries and affiliated companies, successors, assigns, and those acting  
4       in concert with them or at their direction, from directly or indirectly misappropriating in  
5       any manner the Pre-1972 Recordings in California, including without limitation by directly  
6       or indirectly copying, reproducing, downloading, distributing, communicating to the  
7       public, uploading, linking to, transmitting, publicly performing, or otherwise exploiting in  
8       any manner any of the Pre-1972 Recordings.

9 **On The Second Cause of Action For Unfair Competition against all Defendants:**

10      1. For compensatory damages in excess of \$ 100,000,000 according to proof at trial;  
11      2. Punitive and exemplary damages according to proof at trial;  
12      3. Imposition of a constructive trust;  
13      4. Restitution of Defendants' unlawful proceeds, including Defendants' gross profits; and  
14      5. A temporary, preliminary, and permanent injunction enjoining and restraining Defendants,  
15       and their respective agents, servants, directors, officers, principals, employees,  
16       representatives, subsidiaries and affiliated companies, successors, assigns, and those acting  
17       in concert with them or at their direction, from directly or indirectly misappropriating in  
18       any manner the Pre-1972 Recordings, including without limitation by directly or indirectly  
19       copying, reproducing, downloading, distributing, communicating to the public, uploading,  
20       linking to, transmitting, publicly performing, or otherwise exploiting in any manner any of  
21       the Pre-1972 Recordings.

22 **On The Third Cause of Action For Conversion against all Defendants:**

23      1. For compensatory damages in excess of \$100,000,000 according to proof at trial;  
24      2. Punitive and exemplary damages according to proof at trial;  
25      3. Imposition of a constructive trust;  
26      4. Restitution of Defendants' unlawful proceeds, including Defendants' gross profits; and  
27      5. A temporary, preliminary, and permanent injunction enjoining and restraining Defendants,  
28       and their respective agents, servants, directors, officers, principals, employees,

1 representatives, subsidiaries and affiliated companies, successors, assigns, and those acting  
2 in concert with them or at their direction, from directly or indirectly infringing in any  
3 manner any right in any and all of the Pre-1972 Recordings, including without limitation  
4 by directly or indirectly copying, reproducing, downloading, distributing, communicating  
5 to the public, uploading, linking to, transmitting, publicly performing, or otherwise  
6 exploiting in any manner any of the Pre-1972 Recordings.

7 **On All Causes of Action:**

8 1. For reasonable attorneys' fees and costs as permitted by law;  
9 2. For prejudgement interest at the legal rate; and  
10 3. For such other and further relief as the Court deems just and proper.

11 DATED: July 31, 2013

GRADSTEIN & MARZANO, P.C.  
HENRY GRADSTEIN  
MARYANN R. MARZANO  
ROBERT E. ALLEN

-and-

EVAN S. COHEN

16 By:

17 Henry Gradstein  
18 Attorneys for Plaintiff  
19 FLO & EDDIE, INC.  
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**DEMAND FOR JURY TRIAL**

Plaintiff, individually and on behalf of the Class Members, demands a trial by jury of the causes of action alleged in this Complaint.

DATED: July 31, 2013

# GRADSTEIN & MARZANO, P.C.

HENRY GRADSTEIN

MARYANN R. MARZANO

## ROBERT E. ALLEN

-and-

EVAN S. COHEN

By:

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# **EXHIBIT A**

(1) All My Problems	(56) Love In The City
(2) Almost There	(57) Love Minus Zero
(3) Bachelor Mother	(58) Makin' My Mind Up
(4) Ball Bearing, Pall Bearing World	(59) Me About You
(5) Battle Of The Bands	(60) Oh, Daddy
(6) Buzz Saw	(61) On A Summer's Day
(7) Can I Go On	(62) Person Without A Care
(8) Can't I Get To Know You Better	(63) Rugs Of Woods & Flowers
(9) Can't You Hear The Cows	(64) Say Girl
(10) Cat In The Window	(65) Scottish Song
(11) Chicken Little Was Right	(66) She Always Leaves Me Laughing
(12) Chief Kamanawanalea	(67) She Cried Wrong From The Start
(13) Christmas Is My Time Of Year	(68) She'd Rather Be With Me
(14) Come Back	(69) She'll Come Back
(15) Come Over	(70) She's My Girl
(16) Dance This Dance With Me	(71) So Goes Love
(17) Down In Suburbia	(72) So You Want To Be A Woman
(18) Earth Anthem	(73) Somewhere Friday Night
(19) Elenore	(74) Song For You
(20) Eve Of Destruction	(75) Sound Asleep
(21) Flyin' High	(76) Strangers Are Our Brothers
(22) Foggy Water	(77) Strangers Are Our Friends
(23) Food	(78) Story Of Rock & Roll
(24) Gas Money	(79) Surfer Dan
(25) Get Away	(80) Teardrops
(26) Give Love A Trial	(81) Think I'll Run Away
(27) Glitter and Gold	(82) There You Sit Lonely
(28) Good Bye Surprise	(83) Tie Me Down
(29) The Grim Reaper of Love	(84) Too Much Heartsick Feelin'
(30) Guide For A Married Man	(85) Too Young To Be One
(31) Happy Together	(86) Torn Between Temptations
(32) Hot Little Hands	(87) Umbassa And The Dragon
(33) House Of Pain	(88) Walk In The Sun
(34) House On The Hill	(89) Walkin' Song
(35) How You Loved Me	(90) War Of Germany
(36) I Can't Stop	(91) We Ain't Gonna Party
(37) I Get Out Of Breath	(92) No More
(38) I Know That You'll Be There	(93) We Both Were Young
(39) I Need Someone	(94) We'll Meet Again
(40) If Only I Had The Time	(95) Who Would Ever Think
(41) I'm The Man	(96) That I Would Marry
(42) Is It Any Wonder	(97) Margaret
(43) It Ain't Me Babe	(98) Wrong From The Start
(44) It Was A Very Good Year	(99) You Baby
(45) John & Julie	(100) You Don't Have To Walk In The Rain
(46) Just A Room	(98) You Know What I Mean
(47) Lady-O	(99) You Showed Me
(48) Last Laugh	(100) Your Maw Said You Cried
(49) Last Thing I Remember	
(50) Let Me Be	
(51) Let The Cold Winds Blow	
(52) Let's Pack & Beat It	
(53) Like A Rolling Stone	
(54) Like It Or Not	
(55) Like The Seasons	